IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 19836 OF 2007(J)

PETITIONER:

1. CYRIL MAR BESELIOUS, METROPOLITAN,
MALABAR SWATHANTHRA SURIYANI SABHA,
ST.GEORGE CATHEDRAL CHURCH, THOZHIYOOR,
CHAVAKKAD TALUK, TRICHUR DIST.

2. FR.PRINCE I.KOLADI,
VICAR OF ST.GEORGE CATHEDRAL CHURCH,
THOZHIYOOR, MALABAR SWATHANTHRA SURIYANI SABHA,
KOLADI HOUSE, E.M.S.NAGAR, AKKIKKAVU,
THALAPPILLY TALUK.

3. FR.C.V.JACOB, (SABHA SECRETARY),
VICAR OF ST.MARY'S CHURCH PAZHANJI AND
ST.THOMAS CHURCH, KUNNAMKULAM, MALABAR SWATHANTHRA
SURIYANI SABHA, CHERUVATHOOR HOUSE, VAISSERY,
KUNNAMKULAM AMSOM.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SMT.K.J.ANCY
SRI.P.K.BEHANAN

RESPONDENTS:

1. CIRCLE INSPECTOR OF POLICE,
GURUVAYOOR, TRICHUR DISRICT.

2. SUB INSPECTOR OF POLICE, GURUVAYOOR.

3. JOSEPH MAR KOORILOSE,
RETD.METROPOLITAN OF MALABAR SWATHANTHRA SURIYANI
SABHA, THOZHIYOOR, CHAVAKKAD TALUK, TRICHUR DT.

4. V.M.DAVY, S/O.VADAKKAN MATHAPPAN,
VADAKKAN HOUSE, THOZHIYOOR PO.,
PIN- 680 520.

5. K.P.GEORGE, S/O.KUNDUKULAM PATHROSE,
KUNDUKULAM HOUSE, ANJOOR P.O.,
(VIA) KUNNAMKULAM, PIN- 680 523.

6. STATE OF KERALA,
REP. BY THE HOME SECRETARY TO GOVERNMENT,
GOVT. SECRETARIAT, TRIVANDRUM.

BY ADV. SRI.K.RAMACHANDRAN
SRI.P.RAMACHANDRAN
SRI.P.V.SHINE
GOVT. PLEADER SRI. P.A. SALIM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1	TRUE COPY OF THE CONSTITUTION OF THE MALABAR SWATHANTHRA SURIYANI SABHA.
EXT.P2	TRUE COPY OF THE INJUNCTION ORDER DATED 18.8.2005 PASSED BY THE SUB COURT TRICHUR IN I.A. NO. 3551/05 IN O.S. NO. 673/05.
EXT.P3	TRUECOPY OF THE JUDGMENT OF THE DIVISION BENCH OF THIS COURT DATED 9.11.2005 PASSED IN FAO NO. 216/05.
EXT.P4	TRUE COPY OF THE JUDGMENT DATED 20.2.2006 PASSED BY THE HON'BLE SUPREME COURT IN SLP NO. 3155/06.
EXT.P5	TRUE COPY OF THE KALPANA NO. G.01/07-08 DATED 16.6.07.
EXT.P6	TRUE COPY OF PERUNNAL FESTIVAL NOTICE TO BE CELEBRATED ON 9TH & 10TH OF JULY, 2007 OF THE CATHEDRAL CHURCH, THOZHIYOOR.
EXT.P7	TRUE COPY OF THE PETITION FOR POLIICE PROTECTION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST AND 2ND RESPONDENTS.
EXT.P8	TRUE COPY OF THE TIME TABLE OF PRIESTS FOR THEIR DUTIES ISSUED BY THE 1ST PETITIONER METROPOLITAN.
EXT.P9	TRUE COPY OF THE KALPANA NO. D.51/2005 DATED 18.5.05 ISSUED BY THE 1ST PETITIONER METROPOLITAN.
EXT.P10	TRUE COPY OF THE JUDGMENT DATED 7.7.06 PASSED IN WP(C) NO. 16617/06 OF THE HIGH COURT.
EXT.P11	TRUE COPY OF THE MINUTES OF THE COUNCIL MEETING DATED 12.7.2005.

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RESPONDENTS' EXHIBITS:

EXT.R4	TRUE COPY OF THE MARRIAGE ANNOUNCEMENT CERTIFICATE DATED 22.6.2007.
EXT.R4(a)	TRUE OPY OF THE DECISION OF THE CHURCH COUNCIL DATED 1.7.2007.
EXT.R4(b)	TRUE COPY OF THE PLAINT IN O.S. NO. 361/2006 OF THE MUNSIFF COURT, CHAVAKKAD.
EXT.R4(c)	TRUE COPY OF THE LETTER DATED 17.6.2007.
EXT.R4(d)	TRUE COPY OF THE REPLY DATED 23.6.2007 BY THE FIRST PETITIONER TO EXHIBIT R4(c) REQUEST.
EXT.R4(e)	TRUE COPY OF THE LETTER FROM THE MEMBERS OF THOZHIYOOR EDAVAKA WHERE THE CHURCH IN QUESTION IS SITUATED.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN & K. HEMA, JJ.

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W.P.(C) NO. 19836 OF 2007

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DATED THIS, THE 5TH DAY OF JULY, 2007.

J U D G M E N T

Raman, J.

First petitioner is stated to be the Metropolitan claiming himself to be the supreme head and also the permanent trustee of the Malabar Independent Syrian Sabha. The second petitioner is stated to be the Vicar of St. George Catheral Church and the third petitioner is its Sabha Secretary. They seek a direction to respondents 1 and 2 to give adequate and effective police protection to them for the smooth function and conduct of the festival scheduled to be held on 9th and 10th of this month. The details of such functions are contained in Ext.P5 public notice. Petitioners also seek for a direction granting such protection to them from interference of the third respondent, the retired Metropolitan by forcibly entering into the Holly Altar and obstruct the scheduled programmes of the festival by attempting to conduct programs and the Holly Qurbana by himself without the consent of the Metropolitan and other consequential reliefs.

2. As far as Prayer No.C and the directions sought for against the third respondent is concerned, learned counsel Sri. Sohan appearing on

behalf of the third respondent (true, a formal vakalath is not filed by him since the third respondent is in France) submitted that the third respondent will not participate in the festival on 9th and 10th unless there is any unanimity among the parishioners in this regard. This submission is recorded.

3. The contention of the petitioners is that this festival is conducted every year on the 9th and 10th of July and the petitioners were able to conduct the festival in the previous year also based on police protection granted by this Court, as per order dated 7th July, 2007 in W.P.(C) 16617/2006, copy of which is produced as Ext.P10. While granting protection by Ext.P10 order, this Court had taken notice of the fact that O.S. 673/2005 filed by the first petitioner is still pending final adjudication before the Sub Court, Thrissur, which is a suit for permanent prohibitory injunction, restraining the third respondent from interfering or obstructing the petitioner from exercising his spiritual and administrative powers as Metropolitan of the Sabha. In that suit, an application I.A. 3551/2005 was filed seeking temporary injunction and the order passed by the civil court thereon is produced as Ext.P2. Ext.P2 was confirmed by this Court as per

Ext.P3 order dated 9.11.2005. Though a Special Leave Petition was filed before the apex court, it was subsequently, withdrawn. There is no dispute that the said order of injunction is still in force.

4. However, learned counsel appearing on behalf of Respondents 4 and 5 Sri. Ramachandran would contend that subsequently, there is a change in the circumstances brought out by a decision of the parishioners.

5. According to Respondents 4 and 5, the contention that Ext.P6 is based on Ext.P5 is denied. According to them, the decision to conduct the festival was taken by the parishioners on 10.6.2007. The parishioners met on 10.6.2007 which was attended by 41 members and it was decided in that meeting that the first petitioner and third respondent will together conduct the meeting. The parishioners ardently desired the presence of both these dignitaries. Accordingly, it was decided that the third respondent will be the Chief Priest who will lead the ceremony on 9.7.2007 and the first petitioner will be the Chief Priest on the next day. Ext.R4(a) is produced which is stated to be a decision of the church council. Ext.R4(a) is dated 1.7.2007 which is stated to be a decision taken by 27 members elected in the Sabha Council. In Ext. R4(a) there are 21 signatories. The respondents,

however, did not produce the minutes of the decision of the council said to have been taken by the parishioners. According to him, in view of the decision taken in Ext.R4(a) the festival has to be conducted as decided in the said meeting.

6. However, Respondents 4 and 5 did not obtain any modification of the injunction order which is still in force. We cannot possibly decide the disputed questions of fact as to whether any such decision was taken by the council as stated in the counter, especially when the same is disputed and a reply is filed by the petitioners. The apex court in **Moran Mar Baselios Marthoma Mathews II v. State of Kerala** (2007) 2 ILR 701) held that while deciding police protection matter, disputed questions with regard to the title cannot be the subject matter of adjudication by the High Court in a petition under Article 226 of the Constitution of India.

7. In such circumstances, whether there was any decision by the council as stated in the counter affidavit is not a matter on which this Court could pronounce one way or other in a writ petition under Article 226 of the Constitution. So long as the injunction order is still in force as confirmed by this Court as per Ext.P3 order and in view of the fact that based on such

orders, police protection had been granted by this Court as per Ext.P10 judgment, we direct respondents 1 and 2 to give necessary protection to the petitioners for the smooth conduct of the festival scheduled to be held on 9th and 10th of this month.

The writ petition is allowed as above.

P.R. RAMAN,
(JUDGE)

K. HEMA,
(JUDGE)

knc/-